IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WA.No. 1128 of 2007(C)

AGAINST THE JUDGEMENT IN WPC.17372/2006 Dated 21/03/2007
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APPELLANT: PETITIONER

M/S.KAIRALI TOURIST ENTERPRISES (PVT) LTD., P.B.NO.54, ERNAKULAM ROAD, THODUPUZHA P.O., IDUKKI DISTRICT, REPRESENTED BY ITS MANAGING DIRECTOR, SRI.MANOJ JOSE, S/O.JOSE, KUTTIYANI HOUSE, THODUPUZHA P.O., IDUKKI DISTRICT, PIN - 685 584.

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.ADVOCATE)
SRI.P.N.RAVINDRAN

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY TO GOVERNMENT OF KERALA, INDUSTRIES DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. KERALA FINANCIAL CORPORATION, VALLAYAMBALAM, THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGING DIRECTOR.

4. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF INDUSTRY, DEPARTMENT OF INDUSTRIAL DEVELOPMENT, NEW DELHI.

5. THE INDUSTRIAL DEVELOPMENT BANK OF INDIA (IDBI), REGIONAL OFFICE, PANAMPILLY NAGAR, ERNAKULAM, REPRESENTED BY ITS MANAGER.

6. THE RESERVE BANK OF INDIA, ZONAL OFFICE, THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGER.

ADDL. R7. JOSE KUTTIYANI S/o LATE JOSEPH
RESIDING AT PRA III/65 PADIVATTOM
EDAPPALLY, COCHIN 682024
(impleaded as per order dated 13/07/07 on I.A587/07)

ADDL. R8 V.O. SIVADAS, LAKSHMI NIVAS
GOVINDAPURAM, KOZHIKODE
(IMPLEADED AS PER ORDER DATED 6/8/07 ON I.A. 591/07)

R1 & R2 BY GOVT PLEADER SRI BENNY GERVASIZ
R3 BY ADV. SRI.M.C.SEN (SR ADVOCATE)
AND ADV. SRI V.B. UNNIRAJ
R4 BY ADV. SRI.P.PARAMESWARAN NAIR, CGC
R7 BY ADV. SRI.C.P.MOHAMMED NIAS
R6 BY ADV. SRI JACOB VARGHESE
SMT.P.RANI DIOTHIMA
SMT.C.G.PREETHA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No. 1128 of 2007

Dated: 6th August 2007

JUDGMENT

Radhakrishnan, J.

This writ appeal arises out of the judgment in W.P.C. No 17372 of 2006. Writ petition was preferred by the appellant herein seeking a writ of certiorari to quash Exts. P17, P18, P19 and P10(a) and also for a declaration that the appellant is entitled to the investment subsidy covered by Exts. P8 and P9 and that third respondent is bound to credit the subsidy due to it at the appropriate stage of the loan disbursement. Petitioner has also sought for a writ of mandamus directing the third respondent to draw up a proper account on applying interest as stipulated in Exts. P1 and P2 and crediting the Central Investment Subsidy payable as per Exts. P8 and P9 at the appropriate stages and to adjust the amount of Rs 22 lakhs under deposit with it towards discharge of such liability and return the industrial unit to the petitioner.

2. The question regarding the adjustment of the Central Investment Subsidy was the subject matter of O.P. No 2562 of 1997 (Ext. R3(b) and the learned single judge of this court had specifically found in paragraph 17 of the judgment that the amount sanctioned by the State Level Committee and disbursed to the K.F.C alone could be adjusted. K.F.C had specifically stated that no amount except Rs 6,49,500.00 was received towards central subsidy and the same was given credit to. Petitioner could not controvert the above facts. Therefore the allegation of the petitioner that subsidy received was not credited is of no substance and the same is rejected.

3. The only question to be considered is whether Kerala Financial Corporation has extended the benefit of OTS scheme on the basis of the decision taken by the Board of Directors in their meeting held on 28.03.2006 evidenced by Ext. P19. Item No 324 in Ext P19 reads as follows:

> "The Board discussed in detail the note regarding settlement of account of M/s Kairaly Tourist Home, Thodupuzha. The OTS amount as per norms is Rs 172.00 lakhs, which is based on the yield method. Principal outstanding in the loan account is Rs 63.63 lakhs. Party's offer for OTS is Rs 40.00 lakhs only. The Board observed that offer

of the party is very much below the OTS eligibility as per norms and does not cover even the principal outstanding. Hence the Board rejected the offer of the party."

Learned single judge noticed that the above decision taken by the Corporation for extending the benefit of OTS scheme was not communicated to the petitioner. Learned single judge therefore held that the Corporation was bound to inform the petitioner the amount for which it was ready to settle the loan account and that the petitioner should have been given a chance to pay the amount. K.F.C was therefore directed to inform the petitioner the amount due under the OTS on or before 31.3.2007 and the petitioner was given time upto 30.04.2007 for paying the amount and to close the account. K.F.C was also given liberty to specify the amount that would be payable under the OTS as on 30.04.2007.

4. The only question which remains to be considered is whether Ext P19 offer was communicated to the petitioner or not. Learned counsel for the K.F.C referred to Annexure F communication dated 28.03.2007 which is stated to be the only communication sent to the petitioner after Ext. P19. No materials have been produced by the K.F.C before us to show that the decision taken in Ext.P19 extending the OTS was ever communicated to

the petitioner. Annexure F letter dated 28.03.2007 is a communication not based on Ext. P19. Annexure F communication dated 28.03.2007 is not in accordance with the direction given by the learned single judge. On facts, we found that K.F.C has not communicated Ext P19 decision to the petitioner.

5. Under such circumstances, we are inclined to dispose of this appeal treating Ext. P19 as an offer to the petitioner, extending the benefit of OTS. Petitioner, if desirous of availing of the benefit of OTS, has to pay an amount of Rs 50,00,000/- (Fifty lakhs) towards OTS on or before 31.08.2007. The balance amount due on the basis of OTS scheme shall be paid on or before 31.10.2007. The amount, if any, paid after 28.03.2006 be given credit towards OTS. Since Ext. P19 was not communicated in time, we are not awarding interest from 28.03.2006 till today. K.F.C may also charge interest at the rate of 15% per annum from today till the amount is paid by the petitioner. If the amount of Rs 50,00,000/- is not paid on or before 31.08.2007 the benefit of this judgment, would not be available to the petitioner. Needless to say, once the entire amount is paid as per the OTS scheme the unit taken over would be handed over to the petitioner forthwith since the sale was effected to the additional 8th respondent subject to the result of this appeal. If any default is committed in paying the

amount of Rs 50,00,000/- as well as the balance amount, the sale confirmed in favour of additional 8th respondent would stand. We also make it clear that no further extension of time would be granted for payment of Rs 50,00,000/- or the balance amount. Appeal is disposed of as above.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

06/08/2007
en/

[true copy]